



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Jennifer Schroeter

**Respondent:** MacBeattie Recruitment Ltd t/as ROC Recruitment

**Heard at:** Bury St Edmunds (CVP)

**On:** 3 November 2023

**Before:** Employment Judge Laidler (sitting alone)

**Representation:**

Claimant: In person

Respondent: Mrs A Kaur – Singh, Solicitor for Peninsular

**JUDGMENT** having been sent to the parties on 20 December 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The claimant requested written reasons by email of the 3 January 2024 and on the 30 January 2024. She submitted a further document on the 18 February 2024. These were referred to the Employment Judge on the 14 March 2024. These reasons have been provided as soon as possible in the light of other sitting commitments.
2. This hearing was listed to determine whether the tribunal had jurisdiction to hear the claimant's case it appearing to have been submitted out of time. The claim form was received on 1 January 2023 following a period of ACAS Early Conciliation between 4 October and 15 November 2022.
3. The claimant had been employed between 27 June and 11 July 2022 when her employment was terminated as the respondent considered that she had failed to demonstrate her suitability for the role during her probationary period. The three month time period therefore expired on 10 October 2022 subject to any extension

of time granted because Early Conciliation. The judge had calculated and the respondent agreed that the time by which the claim should have been received was 15 December 2022 i.e. one month after the certificate was issued by ACAS. The claim was therefore received approximately two weeks out of time. This point had been raised by the respondent when it filed its response to the claim on the 10 February 2023.

4. Notice of this hearing was sent to the parties on the 14 June 2023. It clearly stated that an Employment Judge would determine at it 'whether the tribunal can hear the claim, as it appears to have been presented out of time'. The claimant applied for a postponement of the hearing listed for 27 July 2023 to be postponed as she was unwell. This was granted and the hearing relisted to take place on 3 November 2023.
5. For the hearing the claimant lodged the following:
  - Statement from experience at the respondent (22 paragraphs)
  - Brief Summary of Statement ( 37 paragraphs over 7 pages but a total of 63 pages including text messages, copy correspondence, screenshots and the claimant's cv.
  - The respondent's employee handbook
  - WhatsApp image.
6. The tribunal heard from the claimant and the judge and the respondent's representative put questions to her. The claimant confirmed she had obtained new employment in November 2022 on a full-time basis in HR and recruitment. She had technical difficulties in submitting the claim but there was no evidence of that before this tribunal.
7. The claimant had homeschooled her 12-year-old daughter from September 2022. In March 2023 she had sought advice from advice centres but had not been advised about time limits. She is able to use the Internet but had found conflicting advice as to whether there were time limits. The tribunal has not found that evidence credible as any search of the Internet as to how to commence an employment tribunal claim will advise that there are time limits that have to be adhered to. Further the claimant had access to an ACAS officer until 15 November 2022 and could have reverted back to them if she had any doubts with regard to how to present her claim.
8. The tribunal considered the claimant's various statements. The claimant's claim is that she was treated less favourably on the grounds of her race which could include ethnicity. The following are examples of matters relied upon in her statement. The claimant talks at paragraph 12 about being wrongly called Jessica rather than her correct name Jennifer. At paragraph 14, that she was laughed at because she did not know where the West End was. At paragraph 16 that colleagues English was criticised. At paragraph 17 that it was suggested an Indian

company be used because they were cheap and at paragraph 21 that there were comments made at the respondent that those working there used to be blonde which the claimant found offensive being of Caribbean background.

9. The claimant further explained at this hearing and it is in her statement that following her dismissal she was prescribed Citalopram by her GP for anxiety and to help with her sleep and this year has been prescribed Zopiclone and Sertraline and feels that the respondent has had a detrimental effect to her mental health. There was no medical evidence in the documents before the tribunal.
10. At the end of her statement the claimant refers to viewing this claim as her grievance and having been subjected to xenophobic and racially leaning language.
11. As has been explained at this hearing the claimant does not have two years continuous service to bring a claim for unfair dismissal contrary to the Employment Rights Act 1996 and any such claim is dismissed. The only claim therefore that the claimant has is one under the Equality Act 2010 that she was treated less favourably on the grounds of her race.

## **12. Relevant Law**

### **Equality Act 2010**

#### **123 Time limits**

- (1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—
  - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
  - (b) such other period as the employment tribunal thinks just and equitable.
- ...
- (3) For the purposes of this section—
  - (a) conduct extending over a period is to be treated as done at the end of the period;
  - (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
  - (a) when P does an act inconsistent with doing it, or
  - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

**140B Extension of time limits to facilitate conciliation before institution of proceedings**

- (1) This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).
- (2) In this section—
  - (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
  - (b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.
- (3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.
- (4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.
- (5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.

13. The respondent referred to the case of Kamari v Greater Manchester Mental Health NHS Foundation Trust EAT – 2020 – 000833 in support of the proposition that the tribunal at this hearing may take account of the claimants prospects of success which it submits are weak. In that case the EAT held that:

...The potential merits of a proposed complaint, which is not plainly so weak that it would fall to be struck out, are not necessarily an irrelevant consideration when deciding whether it is just and equitable to extend time, or whether to grant an application to amend. However, if the tribunal weighs in the balance against the claimant its assessment of the merits formed at a preliminary hearing, that assessment must have been properly reached by reference to identifiable factors that are apparent at the preliminary hearing, and taking proper account, particularly where the claim is one of discrimination, of the fact that the tribunal does not have all the evidence before it, and is not conducting the trial...

## Conclusions

14. The tribunal must consider whether it would be just and equitable to extend time to allow the claim to proceed and has determined having heard from the claimant that it would not be just and equitable to extend time.
15. The claimant may well have been affected by these events as she states but there is no evidence before this tribunal that she was not able to function on a day-to-day basis. She was able to obtain new employment, to homeschool her daughter and to deal with ACAS Early Conciliation.

16. It would not have been difficult for her to find out about time limits and contrary to the evidence that she gave it is not accepted that she would have found contradictory evidence online as it is very clear to all those specialising in employment law matters that there are strict time limits in the employment tribunal.
17. The tribunal is also entitled to take into account the strengths and weaknesses of the case. This was a period of employment of 10 days. The examples that have been cited above from the claimant's own witness statement are what she seeks to rely on. It would appear from reading the whole statement that this case is for the claimant more about her concerns about the changing nature of her role and that she had not been expecting to be familiar with the respondent's Bullhorn CRM system. She also refers at the end of her statement to viewing this claim as a grievance. However this is not a grievance but a legal claim in relation to which there are strict time limits within which that should be submitted. The tribunal has heard no evidence to persuade it that it would be just and equitable to extend time and the claims are therefore dismissed.

Employment Judge Laidler

10 April 2024

REASONS SENT TO THE PARTIES ON

25 April 2024

FOR THE TRIBUNAL OFFICE